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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**

6 BRADLEY G. DRUMMOND,

7 Plaintiff,

8 v.

9 JAMES DZURENDA, *et al.*,

10 Defendants.

Case No.: 3:18-cv-00152-MMD-WGC

ORDER

Re: ECF No. 37

11 Before the court is Plaintiff's Motion for Appointment of Counsel (ECF No. 37).¹ Plaintiff
12 bases his motion on (1) the fact he is unable to afford counsel, (2) that the substantive issues and
13 procedural matters in this case are too complex for Plaintiff's comprehension and abilities, and
14 (3) that his incarceration will greatly limit his ability to effectively litigate his case. (*Id.*)

15 A litigant in a civil rights action does not have a Sixth Amendment right to appointed
16 counsel. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). The United States Supreme
17 Court has generally stated that although Congress provided relief for violation of one's civil rights
18 under 42 U.S.C. § 1983, the right to access to the courts is only a right to bring complaints to
19 federal court and not a right to discover such claims or even to litigate them effectively once filed
20 with a court. *Lewis v. Casey*, 518 U.S. 343, 354-355 (1996).

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23 ¹ Although it appears Plaintiff has used a form which is to be utilized in habeas corpus matters and
references United States Code Title 28, § 2254 (habeas corpus), the court will consider plaintiff's "motion"
in the context of his § 1983 action.

1 In very limited circumstances, federal courts are empowered to request an attorney to
2 represent an indigent civil litigant. The circumstances in which a court will grant such a request,
3 however, are exceedingly rare, and the court will grant the request under only extraordinary
4 circumstances. *United States v. 30.64 Acres of Land*, 795 F.2d 796, 799-800 (9th Cir. 1986);
5 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

6 A finding of such exceptional or extraordinary circumstances requires that the court
7 evaluate both the likelihood of Plaintiff's success on the merits and the *pro se* litigant's ability to
8 articulate his claims in light of the complexity of the legal issues involved. Neither factor is
9 controlling; both must be viewed together in making the finding. *Terrell v. Brewer*, 935 F.2d 1015,
10 1017 (9th Cir. 1991), *citing Wilborn, supra*, 789 F.2d at 1331. Plaintiff has shown an ability to
11 articulate his claims. (ECF Nos. 1, 5, 31, 37, 38.)

12 In the matter of a case's complexity, the Ninth Circuit in *Wilborn* noted that:

13 If all that was required to establish successfully the
14 complexity of the relevant issues was a demonstration of
15 the need for development of further facts, practically all
16 cases would involve complex legal issues. Thus,
17 although *Wilborn* may have found it difficult to
articulate his claims *pro se*, he has neither demonstrated
a likelihood of success on the merits nor shown that the
complexity of the issues involved was sufficient to
require designation of counsel.

18 The Ninth Circuit therefore affirmed the District Court's exercise of discretion in denying
19 the request for appointment of counsel because the Plaintiff failed to establish the case was
20 complex as to facts or law. 789 F.2d at 1331.

21 The substantive claims involved in this action are not unduly complex. Plaintiff's
22 Complaint was allowed to proceed on parts of Count I alleging excessive force and retaliation
23 against Defendant Goedecke, part of Count I alleging an equal protection violation against

1 Defendants Goedecke, Baker, Carpenter, Maley and Angus, part of Count II alleging retaliation
2 against Defendants Baker, Sandie, Carpenter, Malay and Angus, and part of Count II alleging an
3 equal protection violation against Defendants Baker, Carpenter, Malay and Angus. (ECF No. 4 at
4 13.)

5 Similarly, with respect to the *Terrell* factors, Plaintiff has failed to convince the court of
6 the likelihood of success on the merits of his claims.

7 While any *pro se* inmate such as Mr. Drummond would likely benefit from services of
8 counsel, that is not the standard this court must employ in determining whether counsel should be
9 appointed. *Wood v. Housewright*, 900 F.2d 1332, 1335-1336 (9th Cir. 1990).

10 The court does not have the power "to make coercive appointments of counsel."
11 *Mallard v. U. S. Dist. Ct.*, 490 US 296, 310 (1989). Thus, the court can appoint counsel only under
12 exceptional circumstances. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) [cert den 130
13 S.Ct. 1282 (2010)]. Plaintiff has not shown that the exceptional circumstances necessary for
14 appointment of counsel are present in this case.

15 In the exercise of the court's discretion, it **DENIES** Plaintiff's Motion for Appointment of
16 Counsel (ECF No. 37).

17 **IT IS SO ORDERED.**

18 Dated: April 13, 2020.

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20 WILLIAM G. COBB
21 UNITED STATES MAGISTRATE JUDGE
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